



# California Regional Water Quality Control Board Central Valley Region

Karl E. Longley, ScD, PE, Chair

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Arnold  
Schwarzenegger  
Governor

Linda S. Adams

Secretary for  
Environmental Protection

3 December 2008

Mr. Virgil Koehne, General Manager  
Discovery Bay Community Services District  
1800 Willow Lake Road  
Discovery Bay, CA 94505

CERTIFIED MAIL  
7008 1140 0002 8806 0142

## **ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2008-0627, TOWN OF DISCOVERY BAY, CONTRA COSTA COUNTY**

Enclosed is an Administrative Civil Liability Complaint (Complaint), issued pursuant to California Water Code (CWC) sections 13350, 13385 and 13268. The Complaint charges the Town of Discovery Bay (Discharger) with civil liability in the amount of **two hundred-thirty one thousand dollars (\$231,000)** for violations of the State Water Resources Control Board Order 2006-0003-DWQ, General Waste Discharge Requirements (WDRs) for Sanitary Sewer Systems and the Central Valley Regional Water Quality Control Board's WDRs Order R5-2003-0067. The violations are associated with the 17/18 July 2008 Lakeshore sanitary sewer overflow event.

Pursuant to CWC section 13323, the Discharger may:

- Pay the assessed civil liability and waive its right to a hearing before the Central Valley Water Board by signing the enclosed waiver (checking off the box next to item #4) and submitting it to this office by **5 January 2009**, along with payment for the full amount;
- Agree to enter into settlement discussions with the Central Valley Water Board and request that any hearing on the matter be delayed by signing the enclosed waiver (checking off the box next to item #5) and submitting both this waiver and a letter describing the issues to be discussed to this office by **5 January 2009**; **or**
- Contest the Complaint and/or enter into settlement discussions with the Central Valley Water Board without signing the enclosed waiver.

If the Discharger chooses to sign the waiver and pay the assessed civil liability, this will be considered a tentative settlement of the violations in the Complaint. This settlement will be considered final pending a 30-day period, starting from the date of this Complaint, during which time interested parties may comment on this action by submitting information to this office, attention Wendy Wyels. Should the Central Valley Water Board receive new information or comments during this comment period, the Central Valley Water Board's Assistant Executive Officer may withdraw the complaint, return payment, and issue a new complaint.

If the Central Valley Water Board does not receive a signed waiver within 30 days of the date of this Complaint (**by 5 January 2009**), then a hearing will be scheduled for the **5/6 February**

**California Environmental Protection Agency**



**2009** Central Valley Water Board meeting in Rancho Cordova. If a hearing on this matter is held, the Central Valley Water Board will consider whether to issue, reject, or modify an Administrative Civil Liability Order based on the enclosed Complaint, or whether to refer the matter to the Attorney General for recovery of judicial civil liability. Modification of the proposed Administrative Civil Liability Order may include increasing the dollar amount of the assessed civil liability.

Any comments or evidence concerning the enclosed Complaint must be submitted to this office, attention Wendy Wyels, **no later than 5 p.m. on 5 January 2009**. This includes material submitted by the Discharger to be considered at a hearing and material submitted by interested parties, including members of the public, who wish to comment on the proposed settlement. If the Central Valley Water Board does not hold a hearing on the matter, and the terms of the final settlement are not significantly different from those proposed in the enclosed Complaint, then there will not be additional opportunities for public comment on the proposed settlement. Written materials received after **5 p.m. on 5 January 2009** will not be accepted and will not be incorporated into the administrative record if doing so would prejudice any party.

In order to conserve resources, paper copies of the referenced documents are only being sent to the Discharger. Interested persons may download the documents from the Central Valley Water Board's Internet website at [http://www.swrcb.ca.gov/centralvalley/board\\_decisions/tentative\\_orders/index.shtml](http://www.swrcb.ca.gov/centralvalley/board_decisions/tentative_orders/index.shtml). Copies of these documents can also be obtained by contacting the Central Valley Water Board's office at 11020 Sun Center Drive, #200, Rancho Cordova, California 95670-6114, weekdays between 8:00 a.m. and 5:00 p.m.

If you have any questions or comments regarding the Administrative Civil Liability Complaint, please contact me by phone at (916) 464-4835 or by e-mail at [wwyels@waterboards.ca.gov](mailto:wwyels@waterboards.ca.gov).

WENDY WYELS  
Environmental Program Manager  
Compliance and Enforcement Section

Enclosure: ACLC No. R5-2008-0627  
Factors Considered in Assessing the Liability

cc list: see next page

cc w/o encl: Ms. Pamela Creedon, Central Valley Water Board, Rancho Cordova  
Mr. Kenneth Greenberg, USEPA Region 9, San Francisco  
Mr. Mark Bradley, Office of Enforcement, SWRCB, Sacramento  
Mr. Patrick Pulupa, Office of Chief Counsel, SWRCB, Sacramento  
Ms. Lori Okun, Office of Chief Counsel, SWRCB, Sacramento  
Ms. Emel Wadhwani, Office of Chief Counsel, SWRCB, Sacramento  
Mr. Jim Fisher, Division of Water Quality, SWRCB, Sacramento  
Ms. Carol Oz, CA Department of Fish and Game, Region 2, Rancho Cordova  
Ms. Betty Graham, CA Department of Public Health, Drinking Water Program  
District Office, Richmond  
Mr. Sherman Quinlan, Contra Costa Environmental Health Department, Concord  
Ms. Christina Safholm, Contra Costa Environmental Health Department, Concord  
Mr. Randy Johnson, Southwest Water Company, Discovery Bay  
Mr. Bill Jennings, California Sportfishing Protection Alliance, Stockton  
Ms. Jennifer McKay, Discovery Bay  
Mr. Bob Mankin, Discovery Bay  
Ms. Ruth Roberts, Discovery Bay Press

cc (by email): Mr. Jonathan Lockett, East County Times  
Mr. Bill Graham-Reefer, Half Way To Concord

## **Administrative Civil Liability Complaint No. R5-2008-0627**

### **Factors Considered in Assessing Liability**

#### **Nature and Circumstances**

The Town of Discovery Bay Community Services District (Discharger) has violated Statewide General WDRs for Sanitary Sewer Collection Systems Order (General Order) 2006-0003-DWQ and Waste Discharge Requirements (WDRs) Order R5-2003-0067 by discharging approximately 100,000 gallons of raw sewage to surface waters from 17 July 2008 to 18 July 2008 during a sanitary sewer overflow (SSO). The spill occurred due to a pump station malfunction after a power outage. Three of the four pumps failed to start after power was restored and one pump restarted at minimum capacity. The Discharger's SCADA system generated high level alarms which were dismissed by an operator without verifying proper pump station operation. Due to marginal standard operating procedures, the Discharger was not aware of the spill until it was reported by a third party approximately 10 hours later. The overflow originated from a sewer cleanout in the Lakeshore residential community at Discovery Bay. The spilled raw sewage entered a storm drain that discharges directly to Lakeshore Lake, which is hydraulically connected to the Delta. The full volume of untreated wastewater is assumed to have reached the lake.

The Discharger failed to submit reports required by General Order 2006-0003-DWQ and WDRs R5-2003-0067.

The discharge could have been prevented if the Discharger's scheduled maintenance would check failsafe equipment operation and operators would be properly trained in overflow emergency response.

#### **Gravity**

The Discharger has failed to prevent discharges of raw sewage to surface waters in its service area. The Discharger has failed to complete the necessary maintenance and improvements to its collection system to prevent spills of raw sewage. The SSO that occurred on 17/18 July 2008 discharged approximately 100,000 gallons of untreated wastewater into Lakeshore Lake. The Discharger did not submit on time the required five-day non-compliance report required by WDRs R5-2003-0067. Since 2 November 2006, the Discharger has failed to comply with reporting requirements included in General Order 2006-0003-DWQ by failing to submit SSO reports to CIWQS.

#### **Toxicity**

The Delta has sensitive beneficial uses, including domestic water supply and recreation. Potential health risks from bacteria and viruses resulting from raw sewage are a concern for humans. Ammonia in sewage is toxic to aquatic life and sewage also depletes dissolved oxygen in receiving waters. The degree of toxicity from the 17/18 July 2008 Lakeshore spill is unknown. There were no reported fish kills subsequent to any of the spills to surface waters.

#### **Susceptibility of the Discharge to Cleanup**

The Discharger states that vector trucks were used to cleanup the area where the spill originated. However, during a Central Valley Water Board investigation on 14 August 2008, staff observed that the area was not cleaned properly and rags and sewage debris were visible on the ground. The Discharger did not attempt to remove any sewage that entered the Lakeshore Lake, however, once spilled into the lake, removal would not likely be possible.

**Ability of the Discharger to Pay**

The Discharger has not demonstrated an inability to pay the liability. The median family household income for the Discovery Bay 2000 census was approximately \$90,272.

**Voluntary Cleanup Efforts**

The Discharger's response and cleanup efforts have been marginal, and reasonable efforts were not made to fully contain the untreated wastewater spilled. In appropriate situations, the Discharger used vector trucks to clean up the spill in the area adjacent to the storm drain. The Discharger properly notified the Office of Emergency Services and the Contra Costa County Environmental Health Department following the 17/18 July 2008 SSO. However, the Discharger failed to properly notify the Central Valley Water Board pursuant to WDRs Order R5-2003-0067 requirements and report the incident to CIWQS as required by General Order 2006-0003-DWQ. In setting the penalty, the Central Valley Water Board has taken into account the Discharger's response to contain and mitigate wastewater in Lakeshore Lake following the 17/18 July 2008 SSO.

**Prior History of Violations**

The Discharger has failed to report SSOs to CIWQS from 2 November 2006 through 17 July 2008. The Discharger has violated the reporting requirements included in General Order 2003-0006-DWQ. One previous SSO, which occurred on 27 November 2007, was reported to the Central Valley Water Board with a total raw sewage spilled of 8,600 gallons. The 8,600-gallon SSO also originated in the Lakeshore community and was a result of a pump station failure. The untreated wastewater was allowed to reach the lake. The 27 November 2007, and possibly other previous SSOs, was not reported to CIWQS as required by General Order 2003-0006-DWQ.

**Degree of Culpability**

The Discharger was required to be aware of the requirements in General Order 2006-0003-DWQ and WDRs Order R5-2003-0067. The Discharger did not maintain its collection system in a manner that would prevent spills of untreated sewage. It is up to the Discharger to prioritize its work and to complete maintenance and improvements such that it complies with the Discharge Prohibitions of the Orders.

**Economic Benefit**

Pursuant to under CWC section 13385(e), the minimum liability is equal to the economic benefits that the Discharger received from the acts that constitute the violation. Approximately 100,000 gallons of raw sewage spilled, resulting in a discharge to surface waters. The estimated economic benefit cannot be calculated because the best method to resolve the preventative maintenance and collection system improvements is unknown. The Discharger is still expected to complete the improvements to meet the requirements of General Order 2006-0003-DWQ and WDRs R5-2003-0067. The economic benefit is estimated to be below the assessed penalty.